

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO.: 1:95-cr-8

DERRICK EDWARDS

PETITIONER

ORDER

This cause is before the Court on Petitioner's letter requesting that the Court expunge or drastically reduce his fine. The Court construes this letter as a Motion for Reduction in Fine [docket entry no. 144] and denies the Motion for the reasons below:

At the outset, the Court notes that the Petitioner failed to challenge his fine on appeal, and the Petitioner's present request does not allege a constitutional violation, a newly recognized right, or the discovery of new facts, any of which would justify an attack of his sentence. See 28 U.S.C. § 2255(f). Therefore, the Court does not construe Petitioner's Motion as a habeas petition.¹

There are alternative avenues available to the Petitioner by which he may receive a reduction in fine; however, at this stage the Petitioner's request is both premature and procedurally improper. First, the Court may grant a reduction of the Petitioner's fine only upon petition or motion of the Government. See United States v. Ivey, 32 F.3d 567, at *1 (5th Cir. Aug. 3, 1994) (unpublished) (stating that a fine reduction pursuant to

¹ If the Court did construe Petitioner's Motion as a § 2255 Motion, it would likely be time-barred since the Petitioner was sentenced in 1995. See id.

either 18 U.S.C. § 3573 or Federal Rule of Criminal Procedure 35(b) must be prompted by the Government). Furthermore, 18 U.S.C. § 3573 requires the Government to first make reasonable efforts to collect the fine before seeking a reduction, and Federal Rule of Criminal Procedure 35(b) is available only when an individual offers the Government substantial assistance in investigating or prosecuting another person. There is no evidence before this Court that the Government has undertaken its collection of the Petitioner's fine nor is there any suggestion that the Petitioner has offered assistance to the Government. Accordingly, the Court cannot grant the Petitioner's request.

For the foregoing reasons,

IT IS HEREBY ORDERED that Petitioner's Motion for Reduction of Fine [**docket entry no. 144**] is **DENIED**.

SO ORDERED, this the 2nd day of May 2012.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE